

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAYTON ZAMBITO,

Defendant.

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CASE NO. 8:15CR304

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report and Addendum ("PSR"). The government adopted the PSR (Filing No. 138). The Defendant has not filed formal objections to the PSR. The Defendant has filed a motion for downward departure and a motion for variance with a supporting brief (Filing Nos. 140, 141 and 143). See Order on Sentencing Schedule, ¶ 6. (The Court takes note that in the Addendum to the PSR, the Defendant objected to Paragraphs #37 and #38, but did not further pursue that objection.) The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The Court intends to adopt the PSR at the time of sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, these tentative findings are final;

4. The Defendant's Motion for Downward Departure Pursuant to § 4A1.3 (Filing No. 140) and the Motion for Variance from the Sentencing Guidelines (Filing No. 141) will be heard at sentencing; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 30th day of March, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge